December 6, 2006

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: Robert D. Reilly

Date of Filing: June 14, 2006

Case Number: TFA-0166

On July 14, 2006, Robert D. Reilly (Reilly) filed an Appeal from a determination that the Golden Field Office (Golden) of the Department of Energy (DOE) issued to him. The determination responded to a request for information Reilly filed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. This Appeal, if granted, would require the DOE to release the responsive information it withheld from Reilly.

The FOIA generally requires that documents held by the federal government be released to the public upon request. However, Congress has provided nine exemptions to the FOIA which set forth the types of information agencies are not required to release. Under the DOE's regulations, a document exempt from disclosure under the FOIA shall nonetheless be released to the public whenever the DOE determines that disclosure is not contrary to federal law and in the public interest. 10 C.F.R. § 1004.1.

I. Background

On April 26, 2006, Reilly filed a FOIA request with Golden seeking (1) the composition, as of January 6, 2006, of the Merit Review Committee (MRC) of the DOE Golden Field Office; (2) a specific web site listing the names of such persons on the MRC or a copy of a document which contains the names; and (3) the positions and company affiliations of the persons on the MRC who are non-federal reviewers and the credentials qualifying them to be reviewers. *See* Determination Letter at 1. In a determination letter, Golden stated that is was unable to provide Reilly with information responsive to his FOIA request. It further stated that "agency records regarding the composition of the Merit Review Committee (MRC) of the U.S. Department of Energy's Golden Field Office . . . are exempt from disclosure" under Exemption 6. [1] In his Appeal, Reilly challenges the application of Exemption 6 to the withheld information.

1/ Also, in its Determination Letter, Golden stated that no "specific website" exists which lists the names of MRC members. Determination Letter at 2.

II. Analysis

A. Exemption 6

Exemption 6 shields from disclosure "[p]ersonnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C.§ 552(b)(6); 10 C. F. R. § 1004.10(b)(6). The purpose of Exemption 6 is to "protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Department of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982).

In order to determine whether information may be withheld under Exemption 6, an agency must undertake a three-step analysis. First, the agency must determine whether a significant privacy interest would be invaded by the disclosure of the record. If no privacy interest is identified, the record may not be withheld pursuant to this exemption. *Ripskis v. Department of HUD*, 746 F.2d 1, 3 (D.C. Cir. 1984) (*Ripskis*). Second, the agency must determine whether release of the document would further the public interest by shedding light on the operations and activities of the government. *See Hopkins v. Department of HUD*, 929 F.2d 81, 88 (2d Cir. 1991)*; Department of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *FLRA v. Department of Treasury Financial Management Service*, 884 F.2d 1446, 1451 (D.C. Cir. 1989), *cert. denied*, 110 S. Ct. 864 (1990). Finally, the agency must weigh the privacy interests it has identified against the public interest in order to determine whether the release of the record would constitute a clearly unwarranted invasion of personal privacy. *Reporters Committee*, 489 U.S. at 762-770. *See generally Ripskis*, 746 F.2d at 3.

1. Privacy Interest

Golden determined that there was a privacy interest in the identities of the MRC members, as well as their positions, company affiliations, and qualifying credentials. According to Golden, "the need to keep the [requested information] private outweighs the small public interest (if any) gained from release of such information." Determination Letter at 2. Golden further stated that "this information is of a personal nature, disclosure of which could cause the individuals in this case to be harrassed and/or result in an unwarranted invasion of their privacy. *Id.*

We have consistently determined "that there is a real and substantial threat to employees' privacy if personal identifying information . . . were released." *Painting & Drywall Work Preservation Fund, Inc.*, 15 DOE ¶ 80,115 at 80,537 (1987). *See also Painting & Drywall Work Preservation Fund, Inc.*, 16 DOE ¶ 80,102 at 80,504 (1987); *International Brotherhood of Electrical Workers*, 13 DOE ¶ 80,120 at 80,569 (1985); *International Brotherhood of Electrical Workers*, 13 DOE ¶ 80,104 at 80,519 (1985). The same type of privacy interest is involved in this case. In fact, because the members of the MRC whose names are sought are non-federal members and private citizens, there is a significant privacy interest in maintaining their confidentiality. If this information were disclosed to the requester, the disclosure "would undoubtedly result in disappointed financial assistance applicants seeking similar information in order to impose uninvited and unwanted contacts on MRC members outside the selection process, seeking explanations and/or challenging the

evaluations of those merit reviewers." *See* Golden's Response at 4. Such harassment would "adversely impact deliberations and decision-making within DOE's financial assistance award process." *Id.* We have previously found the potential for harassment of individuals to be sufficient justification for withholding information under Exemption 6. *See, e.g., William Hyde*, 18 DOE ¶ 80,102 (1988). These considerations govern our determination. We therefore find a real and substantial privacy interest in the identities of the MRC members.

2. Public Interest in Disclosure

Having established the existence of a privacy interest, the next step is to determine whether there is a public interest in disclosure. The Supreme Court has held that there is a public interest in disclosure of information that "sheds light on the operations and activities of the government." *Reporters Committee*, 489 U.S. at 773. *See Marlene Flor*, 26 DOE ¶ 80,104 at 80,511 (1996). The requester has the burden of establishing that disclosure would serve the public interest. *Flor*, 26 DOE at 80,511 (quoting *Carter v. Department of Commerce*, 830 F.2d 388 (D.C. Cir. 1987)).

We find that there is a minimal public interest in the release of the withheld information. Reilly has not demonstrated what public interest would be served by releasing the identifying information of the MRC . Rather, he asserts that "the composition of a committee which reviews certain public activities clearly does not fall within the ambit or scope of personnel and medical and similar files as are kept for government employees." Appeal at 1. Reilly further asserts that "the composition of federal boards and commissions and the like are usually not only disclosed, but published. Such disclosure is necessary to hold the federal government accountable to the citizens of this democratic country." *Id.* Simply alleging that similar information is usually disclosed to the public is not sufficient.

3. Balancing the Interests

As stated earlier, there is a significant privacy interest in this information. In determining whether the disclosure of the identifying information could reasonably be expected to constitute an unwarranted invasion of personal privacy, courts have used a balancing test, weighing the privacy interests that would be infringed against the public interest in disclosure. *Reporters Committee*, 489 U.S. at 762 (1989). We agree with Golden and find that the minimal public interest here is outweighed by the real and identifiable privacy interests of the MRC members.

It Is Therefore Ordered That:

(1) The Appeal filed by Robert D. Reilly on June 14, 2006, OHA Case No. TFA-0166, is hereby denied.

(2) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought

in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: December 6, 2006